is seen certainly as a drain of cash flow for all and as causing a concomitant reduction in local service, in public service, in non-broadcast community outreach.

NAB has had prepared several studies to analyze and assess the impact of DARS on traditional radio. These studies confirm, document and describe the likely adverse effect of satellite DARS on local radio and local service everywhere. They show a particularly negative effect on smaller market station revenue, which translates directly into losses in the extraordinary local programming and local service in these communities.

We here describe these studies and tell how they form the framework and the pieces of the puzzle of potential "impact." We will show, as the Notice asks, the particular impact on small market stations and their local communities.

A. Analyzing the Impact of DARS on Local Radio.

The SPR Study described supra contains an economic analysis of the likely impacts that can be reasonably anticipated to occur as a result of market penetration by satellite DARS.[47] SPR has not attempted to analyze the market potential and likely technology diffusion rate for DARS, which they believe to be speculative and uncertain. Their focus was the analytical connections between DARS and competing broadcast services.

The SPR Economic Analysis posits that implementation of satellite DARS implies greater competition for audiences, and that to the extent that greater competition for audience reduces the size of commercial radio broadcasters audiences, revenues of commercial broadcast stations will be reduced. *That is, for purposes of analysis, audience*

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[47] Id., Economic Analysis, at 36-47.

impacts are the primary driver.[48] In analyzing this impact, SPR confirms that *radio's competitive adaptations have uniformly consisted of attempts to economize on station operating costs, particularly program costs.*[49] Stations have economized under intense competitive pressures first with recorded music, then with packaged program services delivered by satellite (and less staff), and with joint ownership and joint operations. (SPR comments that the FCC's efforts in expanding the number of competing radio stations in fact have begun to prove counter-productive, at least regarding the amount of local community-oriented programming.) SPR asserts that satellite DARS, to the extent it succeeds, will compel additional economizing by local broadcasters, which will likely take the form of additional reliance upon satellite delivered programming.[50] The question thus becomes: whither localism.[51] SPR submits that the "cost" in DARS-induced reductions in the amount of community-oriented programming is not easily quantified, but that it needs nonetheless to be part of the Commission's cost/benefit analysis.[52] What follows is a

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48 Id. at 37, 38. SPR also suggests that DARS proponents are probably wrong in minimizing the impact of DARS on terrestrial listenership (competitors' perceptions of impact are usually right; there is not significant "incremental" audience or hours left untapped, and not enough to support a DARS service; even a minimum degree of success in attracting customers necessarily implies competitive impact on terrestrial radio; the reality is more likely that new DARS listeners are likely to be current terrestrial listeners, who will substitute DARS to some extent for terrestrial radio listening) SPR also maintains that terrestrial radio is not so able to withstand competition as Satellite CD Radio suggests (corrected for inflation and new stations, average radio revenues are not rising so much; local stations vary widely in terms of economic performance, with most stations just eking out an existence and with many stations' being highly marginal operations; with these wide variations, aggregated or average statistics will tend to mislead, to overstate economic circumstances of most typical stations). Id., at 38-43.

49 Id., at 44 (emphasis added).

50 Id., at 47

51 Id.

52 Id.

discussion of each step on the path of DARS' economic impact on local radio and local community service.

B. Syllogism of Economic Impact and Reduction in Local Service.

1. Audience Diversion.

As the SPR Study points out, "audience impacts are the primary driver" of the analysis to be made with regard to the effect of DARS on local radio[53] and that new DARS listeners will be likely current terrestrial radio listeners who will substitute to some extent their local radio listening with DARS listening. In an attempt to estimate the likely amount of audience diversion, NAB commissioned a national omnibus consumer survey to assess whether and how much consumers would listen less to local radio because of DARS. The results of this survey are contained in a report prepared by the NAB Research and Planning Department entitled Estimating the Audience Diversion From Broadcast Radio by the Introduction of Satellite Digital Audio Radio Service (DARS), and appended hereto as Attachment 5.[54]

This Audience Diversion Study concluded that, overall, *local radio listening* on an hours-per-week basis, *would decline 11.6%* because of DARS.[55] The results indicate that audience diversion from terrestrial radio to DARS would vary quite a bit by

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53 Id., at 37-38.

54 NAB Research and Planning Department, "Estimating the Audience Diversion From Broadcast Radio by the Introduction of Satellite Digital Audio Radio Service (DARS)" ("Audience Diversion Study"), July 1995, attached hereto as Attachment 5.

55 This Audience Diversion Study, in a separate section describing cable digital audio services, discusses an academic study showing that two-thirds (65%) of the Richmond, Virginia cable audio subscribers report listening to terrestrial radio in the *home* either "a great deal" less or "somewhat" less. Id., at 3.

demographic group, with *significant numbers of terrestrial radio's key demographic groups diverting large amounts of time now spent listening to radio to DARS listening.*[56] For example, the loss of local radio listening hours per week is highest among younger listeners (18.7%), higher income listeners (19.5%), and best educated listeners (18.2%).[57]

Further supporting the likelihood of audience diversion, or "fragmentation," from the addition into the marketplace of "fungible" radio services is the study "Four Share World", by the Vice President Director of Research of the Katz Radio Group, Gerry Boehme."[58] Mr. Boehme's thesis is that the average radio market has fractionalized such that the new radio environment is one where the audience shares of radio outlets in a given market are converging towards a "four share," from an historically wider separation among the audience shares garnered by stations in a market. Among the factors that Mr. Boehme lists as influencing this "fractionalization" and convergence,[59] the most important factors are "the growth of FM" and "new stations."[60] NAB suggests that once DARS is available to listeners in the marketplace,[61] there will, inevitably, be a "fragmentation" of audience shares, with traditional radio losing share.[62]

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56 Audience Diversion Study at 9-11.

57 See Id., at 10.

58 "Four Share World" presentation, Gerry Boehme, Katz Radio Group, August 1995, attached hereto as Attachment 8.

59 Id., at 5.

60 Gerry Boehme, Telephone interview, August 8, 1995.

61 As the SPR Study suggests, the FCC should, for purposes of analysis, assume the "success" of DARS in penetrating the market, or all policy with regard to DARS is naught. SPR Study, at 5.

62 Cf. Id., at 23-25. The Kagan Study, infra, at 3, shows that increases in the number of radio stations have resulted in "significant loss of revenues and cash flows for the average competing station."

2. Loss of Advertising

While diversion of audience from local radio to DARS will have a significant impact on stations' revenues, DARS competition for advertising with local stations and with terrestrially-distributed networks would obviously have an added direct impact on stations' revenues. As SPR notes, were satellite DARS capable of offering national advertisers a more transactionally convenient method of targeting specific audiences on a national basis, there would be an even larger negative impact on the revenues of commercial radio stations than with a strictly subscription DARS service.[63] Moreover, such "targeting" of specific audiences, via either DARS' mainstream or its "niche" formats, will likely be at the expense of local radio outlets that format those same mainstream or niche formats. And, as with the draw of audience, it is unrealistic to assume that much of the advertiser support of a DARS service will come from new, first-time advertisers. There are today significant availabilities and efficiencies for national advertisers, and for advertisers seeking to reach a wide variety of specific audience demographics (i.e., with radio networks and with national spot buys), and it is not likely that DARS availabilities will "create" new national advertisers. The Kagan Study, discussed just below, states the opinion that an advertiser-supported DARS service's prime source of advertising revenue will come, not from attracting "extra" advertisers, but from fragmenting the existing national revenue base of the local radio industry.[64]

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[63] See Id., at 37.

[64] Kagan Study, infra, at 18.

For terrestrial broadcasters, the addition of any advertising to DARS services would cause further significant reductions in revenue, in every size market.

3. Loss of Revenue and Effect on Profitability.

The NAB Audience Diversion Study notes the commonly-accepted fact that declines in radio audiences translate quite closely into losses in radio station revenues, reciting the accepted rule of thumb of a 1:1 relationship.[65] Thus, the study concludes, an *overall 11.6% drop in audience would translate into an 11.6% drop in revenue for local stations.*[66] That study also notes that losses in key demographic categories would lead to disproportional revenue losses (i.e., greater than the overall 11.6% figure).[67]

To get some sense of the likelihood and magnitude of the potential impact of DARS on local radio stations in different sized markets through fragmentation of their audiences and their advertisers, NAB commissioned a study of those effects from Kagan Media Appraisals, Inc. The Kagan Study,[68] which is appended hereto as Attachment 9, analyzed the likely impact of both subscription-based and advertiser-supported satellite-delivered direct-to-consumer audio services on the average local station in varying market sizes.

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65 Audience Diversion Study, supra, at 11. Cf., "Satellite Radio," filed by CD Radio, Inc. in Gen. Docket No. 90-357, September 7, 1994, at 7. For a more complex analysis of this relationship between ratings and revenue, see Kagan Study, infra, at 11.

66 Audience Diversion Study, supra, at 11.

67 Id.

68 The Economic Impact of Satellite-Delivered Radio on Local Radio Stations ("Kagan Study"), Kagan Media Appraisals, Inc., August 31, 1995, appended hereto as Attachment 9.

The Kagan Study examined the impact of the actual addition of from one to fourteen competing FM signals from 1985 to 1993 in 36 markets *on the audience share* of the average radio station in each market. This impact on the average station's audience share was then translated into impact on revenue. The study then calculated the impact on the average station's cash flow, i.e., profitability. This resulted in an estimate of the reduction in profitability (cash flow) *from audience fragmentation* on the average station in the studied markets. The results as to the average station in each market size are reported. The average market studied had six stations added. The Kagan Study shows that the *audience fragmentation from an average of six additional competing signals* would cause the ***average large market station to lose over half of its cash flow,*** would cause the ***average medium market station to lose 52% of its cash flow***, and would cause the ***average small market station to lose 121% of its cash flow.***[69]

The Kagan Study also examined the effect of the loss of national advertising from an advertiser-supported service, taking, for purposes of analysis, Primosphere's estimate that it would garner 10% of the national advertising revenues from local terrestrial stations.[70] The study indicates that the loss of national advertising revenues will decrease net revenues and resulting cash flows by varying amounts, depending on the size of the station. Using an "operating leverage matrix" to assess changes in cash flow from changes in net revenues, and the differences in amount of national advertising of different sized stations, the Kagan Study estimated that a *only a 10% reduction in national advertising*

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[69] Id., at 16.

[70] Id., at 17.

revenues would **reduce cash flow (profits) by 4.8% for the average large station, by 5.5% for the average medium station and by 9.5% for the average small station**. The Kagan Study further states the opinion, as indicated above, that an advertiser-supported DARS service's prime source of advertising revenue will come from fragmenting the existing national revenue base of the local radio industry, and not from "extra" new advertisers.[71] Thus, if it is to be successful, an advertiser-supported DARS service will need to take more than 10% of the existing national radio advertising base. And, thus, the impact on stations' cash flow will be greater, perhaps much greater, than indicated in the above calculation of the impact of a loss of 10% of national advertising revenue.

The Kagan Study concludes that the impact on profitability of local stations by the introduction of satellite DARS will be *at least as great* as the significant declines seen in the studied markets with an average of six new signals as the result of audience fragmentation *and* at least as great as the reduced cash flow from a 10% loss of national advertising.[72] The Kagan Study further concludes that, while the four DARS applicants each propose 21 to 32 new radio channels locally, the "impact of such and onslaught of new radio signals would be such that existing local stations would incur severe economic hardships -- hardships that would place their survival, let alone continued locally - response radio service -- in great peril."[73]

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[71] Id., at 18.

[72] Id., at 1. The Kagan Study proffers that the projected effects, and more, will occur *after* substantial numbers of DARS receivers have penetrated the market. Id., at 3.

[73] Id., at 1.

4. Impact on Stations and on Local Service.

Given a reduction in audiences of and approximately 10% given the translation of these audience losses into lost revenue and profitability, the impacts on stations and their local service would be dramatic, even for the stronger stations, *even without further direct revenue losses from DARS' drawing off of national advertising revenues.* As the Kagan Study concludes, "the impact of such economic effects on local radio could be devastating to the quality of the vital community service it provides to listeners and the local advertising community."[74] The impacts will vary tremendously according to the size and financial strength of the station, and according to market size. But impacts there will be -- everywhere.

The SPR Study, in its Economic Analysis section, examines and describes the adaptations radio has made in response to intense competition and points to the adaptations coming and to come with more competition for audience and advertising. SPR says the competitive adaptations radio has made over the years have "*uniformly* consisted in attempts to economize on station operating costs, *particularly program costs.* To economize on program costs stations not only relied increasingly on recorded music as a program staple, but also increasingly began to rely on packaged program services delivered by satellite to fill out their broadcast schedules."[75]

There is thus, SPR says,

> "a rather striking irony in the FCC's efforts to promote competition and local service in radio broadcasting. . . . [A] very large number of communities now have local broadcast outlets. It is now the case that even in relatively sparsely

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[74] Id.

[75] SPR Study, at 44-45.

> populated areas, substantial numbers of signals are receivable and there is a considerable diversity of program formats available. . . .As stations have proliferated and audiences have fragmented, stations have been under greater and greater pressure to economize, often simply to survive. That pressure has translated into reductions in staff and in locally originated programming. So we increasingly confront the ironical situation of an extensive system of local broadcast distribution outlets, created to promote the creation and distribution of locally-oriented programming, transmitting ever growing amounts of non-local programming under threat of competitive survival.
>
> Satellite DARS represents additional competition for local broadcasters. It will, to the extent that it succeeds, compel additional economizing efforts by local broadcasters. Those efforts will likely take the form of additional reliance upon, *inter alia*, satellite-delivered programming.[76]

Of particular notice are the stations in large, medium and small markets that today present "niche" programming. Those with the more popular "niche" formats, for example, the classical stations, the Spanish language stations, the jazz stations, the urban formatted stations, are going to be severely impacted by the duplication by DARS of their format, albeit in a homogenized and nationalized version.[77] Other "niche" stations, the vast majority of which will *not* be duplicated by DARS,[78] will still be hurt by their audiences' listening to more "mainstream" DARS stations some of the time. Listeners' sampling of local stations for local information or local specialty programming not provided by DARS,

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[76] Id., at 45, 47.

[77] An examination of DARS proponents' suggested formats reveals that only the more popular "niche" formats of Spanish-language music (one or two), classical (two or three), jazz (two), and even the more mainstream black/urban formatted (one or two) will be provided by DARS. See, attached hereto as Attachment 10, format listings from Application of Primosphere Limited Partnership, filed Dec. 15, 1992, in File Nos. 29/30-DSS-LA-93; 16/17-DSS-P-93; CD Radio S-1, 12-DSS-MISC-94, 2/2/94.

[78] Apparently only the more popular niche formats actually will be provided by satellite DARS. It is interesting to note that, despite the much-touted DARS "promise" of multiple foreign language offerings, the only foreign language channels listed are Spanish. There will be no Portuguese channel, no Vietnamese channel, no Polish channel, unlike the wide availability of *local* ethnic radio programming in areas with substantial ethnic populations, which is listed in Attachment 12.

but turning some of the time to DARS for "mainstream" service or more general "niche" programming will reduce ratings, revenues and profitability. These *local* niche formatted stations will experience the same pressures to economize, and again, will likely turn to satellite-fed program packages, which allow staff reductions, which in turn reduces the ability to serve local needs and interests.[79] There is indeed a *potential net loss in local niche programming* to be considered carefully by the Commission.

Local Spanish language broadcasters will be significantly affected by the DARS national version of their basic program format. Today, there are over 400 local Spanish language radio stations, many more local stations with some Spanish programming, and a large number of stations with Spanish programming that are in states *outside* of the states with the top fifty Hispanic metro markets.[80] As can be seen in Attachment 11, a large number of Spanish stations are not in large markets. Like other smaller market stations, they are especially vulnerable to satellite DARS.

To give some indication of the financial straits of the weaker stations generally, NAB submits as Attachment 13[81] a report on the negative financial situation of many AM and FM stations nation-wide, using the most recent available financial data, that from 1991. That report, noting intense increases in competition both within and outside the radio industry, observes that, in 1991, more than half of full time *AM stand-alone stations*

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[79] See Kagan Study, at 11, for their description of the "not unusual" vicious downward cycle where programs, air personalities, features, news coverage, etc. are sacrificed to expense cuts.

[80] See Attachment 11 for a listing of Spanish-language stations and a list of the Top 50 Hispanic Metro Markets.

[81] Radio Station Financial Picture, NAB Research and Planning Department, Jan. 27, 1993. Appendix to NAB Comments in FCC Gen. Docket No. 90-357, 1/27/93.

lost more than $19,000. Half of all FM stand-alone stations lost more than $10,367 and half of all AM-FM combos lost more than $15,970. The average AM radio station saw its net revenues decline by nearly 7.7% annually, and the average FM station by 1.3%, for the preceding five years. After accounting for inflation, the decrease is more substantial -- 39.3% for AM stand-alone stations between 1987 and 1991. While the numbers of stations losing money give some indication of the financial conditions of a great proportion of stations in the industry, the "averages" referred to in this report mask the far worse situation of the "typical" station.

These weaker stations are surely to be impacted by the advent of 30 to 80 DARS channels. Their "adaptations" will likely follow the path described above and in the SPR Study to less local programming and local service. And, as the Kagan Study notes, "*while the impact of such a proliferation of programming sources might be shouldered by the largest market stations with the strongest financial resources, the onslaught of new services would likely be devastating to smaller market local radio operations.*"[82]

IV. Satellite DARS Would So Affect Small Market Local Radio That Local Service To Local Communities Would Be Greatly Diminished.

> [W]hen you have fellows that drop signals in here from a satellite. They're not going to compete with us for the local dollars, but they are going to compete with us for local audience. That will weaken us. And it will not just weaken the radio market, it will weaken the whole local economy. I recognize it's probably going to happen because the people that are a long way away, who have no conception of the radio business much less small market radio, are going to make decisions that will affect all of us. We'll just have to live with them if we can. If we can't, that's about the story. We could cut our costs by tomorrow morning opening up with four employees. We could possibly get by with three employees. We've got everything we need, including the satellite link. If we reduced our billing 50

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[82] Kagan Study at 24.

> percent by doing that, we'd still make a profit and probably make a better profit than we do now. But would we actually be serving the community? The answer is "no." Because our news would be from the Louisiana network. We'd no longer have local news. We wouldn't have remote broadcast. We would have national music, state news and local commercials. And that's it! I could close this building, put the station in a 12' x 40' mobile home and still be on the air. But I'd hardly be a local station anymore. Who gains from that outcome?[83]
>
> -- Paul Cook, KQKI-FM, Morgan City, LA.

A. <u>The Voices of Small Market Radio.</u>

As described above, to attempt to bring to life the potential impacts of DARS on local radio in small towns across America, NAB commissioned the Strategic Policy Research firm to conduct and prepare case studies of six small communities. The purpose was to hear from broadcasters and others in those communities as to the likely potential effects on those stations and on those communities of the introduction of 30, 50 or 80 channels of satellite delivered radio programming into their towns. SPR, for this study, went to these small communities, each different in many ways -- a good cross section of small town America. They interviewed local broadcasters, local civic officials and local advertisers and prepared case studies for these markets. They were Morgan City, Louisiana; Laconia; New Hampshire; Enid; Oklahoma; Longview/Kelso, Washington; Coalinga/Hanford, California and Coudersport, Pennsylvania.

The participants in the SPR case studies spoke about the value of local radio to their communities, spoke about the cut-backs that would have to be made if local radio stations lost audiences to DARS, mainly in people and local programming, and spoke about the things the stations do now, that they *are* now to these communities, that would

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[83] SPR <u>supra</u>, at 57.

be changed. They would be less able to help in emergency situations and community affairs. Some would lose the localness of their voice altogether. Communities overall would be harmed by the losses in community service and programming and a sense of cohesion. Their stories in their words are contained in the SPR Study which is Attachment 1 to these comments.

SPR identified five principal findings or themes that were consistently sounded by participants in the study.[84] They are:

- Local radio markets are highly competitive, providing listeners with a broad array of program choices and advertisers with an effective means of reaching target audiences.

- Stations licensed to these markets play a vital role in the life of the communities they serve, providing an important forum for discussion of significant issues of public importance, a productive catalyst for organization of community affairs, local charities and social action, and an effective vehicle for dissemination of many different types of information of interest to diverse groups within the local community.

- As competition in radio broadcasting (and related markets) has intensified through the years, station operators have adapted by economizing on programming costs, personnel expenditures and other variable inputs, often substituting satellite program feed for locally originated programming. Joint operation of multiple stations has also provided an important means of achieving cost economies.

- Study participants perceive that implementation of satellite DARS will necessarily compel additional efforts to economize on programming cost as audience are further divided, and that, lacking adequate alternatives, communities will inevitably suffer some degradation in the local community services they currently receive to the detriment of the local community's ability to thrive and cohere as a special place.

- There is a clearly perceived tension between any benefits of a new national radio service derived from additional choice among or within homogeneous and geographically undifferentiated program formats, on the one hand, and the

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[84] Id. at 8-18.

benefits of local broadcast services oriented around the lives of a very large number of diverse, individual communities, on the other.

B. The Impact of Satellite DARS on Small Market Local Radio.

Far from the monolithic industry that satellite DARS proponents posit, small radio markets are vastly different from large radio markets. Small market stations are much more economically vulnerable than large market stations in that they need a much bigger share of a much smaller audience to survive and in that their audience potential and thus revenue potential is much smaller to begin with. Stations able to reach larger audiences in large markets can survive with smaller market shares which, because of the potential audience size, still translate into healthy revenues. In contrast, smaller market stations are always struggling to retain profitability in the high fixed cost business of radio.[85]

While the radio industry in large markets overall has experienced strong recent growth in revenues, there are still very significant portions of the industry still facing tough financial times. Primarily these stations are smaller stations in larger markets or stations of all sizes located in small to medium sized markets.

NAB retained the radio industry accounting firm of Miller, Kaplan, Arase & Co. to receive and evaluate the financial statistics of radio stations in 17 small markets, each with 3-8 stations. Miller Kaplan then calculated for each station in the nine markets having

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[85] One indication of the disparity of financial situations between radio station in small and medium markets with station in larger markets is the prices paid for the stations. The average price paid for a station in the top ten largest markets between January 1, 1993 and June 30, 1995 was *20 to 40 times* the price paid in unranked markets, and *15 to 20 times* paid in markets ranked 101 through 261. David Schutz, *Trends in Radio Station Sales: 1993-1995*, page E-1, National Association of Broadcasters, September 1995. The average price paid for an AM-only station in markets 1-10 was $4 million, FM- Only $20 million, AM/FM combo $28 million. In unranked markets, AM-only $200 thousand, FM-Only $400 thousand, AM/FM combo $600 thousand. In markets 101-261, AM-only $200 thousand, FM-Only $1 million, AM/FM combos $2 million.

sufficient responses a the effect of 10% loss of advertising revenues due to a 10% loss in listening because of DARS.[86]

The Miller Kaplan Report is appended to these comments as Attachment 15.[87] Miller Kaplan found that *"approximately two-thirds of the [53] operations went from achieving a comfortable profit to becoming marginal operations under the pro-forma 10% revenue drop scenario."*[88] *Of the nine markets, only two markets had an average positive net income after the 10% revenue reduction*, where seven of the nine started with positive net incomes.[89] In one market described in the Report, three operations went from a near break-even position to a significant loss. In another market, the average loss of five loss-position operations increased from $10,000 to $31,000. In another market a dominant radio operation's $106,600 profit dropped to just $12,100. Another radio operation in that market went from a $18,200 loss position to a $41,100 loss position. In another market, the two profitable radio operators ($77,000 and $32,200) wind up with losses of $45,700 and $36,600. *After the 10% reduction, seven of the nine markets wind up with more than half of the operations' losing money.*

C. The Impact of Satellite DARS on Local Community Service.

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86 A 10% audience diversion figure was used as an estimate, given the results, described supra, of the consumer survey as to audience diversion from DARS (9.3% for non-metro areas). The one-to-one audience ratings to revenues rule-of-thumb was applied to estimate a 10% drop in advertising revenues.

87 Report by Miller, Kaplan, Arase & Co., on the potential effects of a 10% decrease in radio revenue in small markets (hereinafter "Miller Kaplan"), August 18, 1995. Appendix 14.

88 Id., at 2 (emphasis added).

89 Miller Kaplan found that this 1994 "starting position" appeared representative of the overall picture. Id.

With the kinds of significant losses in revenues and drops in profitability in the Miller Kaplan markets and others across the nation similar to them, the impact on stations' abilities to provide local programming service and other community service diminishes significantly, as is recounted in the case studies -- all of which markets were included in the Miller Kaplan results.

Jesus Larios of KJOP in Hanford/Coalinga says that

> I think if this new service took even 1 percent of our listeners, that will hurt us because of the condition that we are in. We are already suffering. We are already scratching. We're trying to get out of the grave. If somebody comes along and pushes us in, we are not going to be able to get out. And they who will serve this community? Where is the information going to come from?[90]

Ken Niles of KFO in the same Hanford/Coalinga area says

> We're a small operation. If we lose 10 percent of our audience or our revenues, we'd probably have to shut the door. We couldn't survive. I think that would shut down a lot of radio stations in small towns. A lot of stations have shut the door already. They can't survive with all the competition they face. Other stations have gone to satellite programming -- talk shows or music packages from the satellite. But you lose something because we're on the air live here in this town. People call us and say, "Ken, have you got this record?" Or, "I've got a birthday I'd like you to announce. Can you fit that on the air?" You can't do that on the satellite.[91]

So, the only English language station serving the communities of Hanford, Lemoore and Coalinga (KFO) and the Spanish station serving that same area (KJOP) say they wouldn't make it with a 10% loss due to DARS. Gone would be the coverage of Coalinga's high school football games. Gone would be coverage of the local soccer league. Gone would be two stations who recount local reporting of and relief efforts for

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[90] SPR, supra, at 128.

[91] Id., at 126.

washed-away highways and major earthquakes. Gone would be what the school superintendent of Coalinga described about the local football coverage:

> What was happening [with the football coverage] was that we were beginning to hear this oral tradition of what the community, what the local culture, what our football team, what we're all about. . . . We have a very active Boosters' Club. And we made sure that they got plugged in and that led to their being able to do more things. What this kind of thing does is it starts to bind people together and form a cohesiveness that otherwise is much more dispersed.
>
> This sense of community cohesion is particularly important for an area that's in transition. . . . Which way is the community going to grow? Are these new people going to be integrated or not? One of the means to effect that integration is through the media, especially our local radio station. It supplies a way to give some sense of community identity.[92]

Of the five Miller Kaplan markets that were included in the SPR Study, all five wind up after a 10% drop in revenue with a majority of the stations as unprofitable, with four being significantly unprofitable (average net losses of $13,433, $59,000, $39,807, and $57,962).[93] The fifth market winds up with a positive average net income, but 5 of the 6 operations there are unprofitable.[94] The average net loss for the three stations in Hanford/Coalinga would be $57,962. The stations and community people in those five markets speak about what their communities would lose if the stations or their successors cut staff and go to satellite-delivered programming. Their words are recounted in the SPR case studies.

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92 Id., at 121, 128.

93 Miller Kaplan at 3.

94 Id.

V. The Real Benefits of Satellite DARS Are Too Few To Justify the Costs.

The Commission's Notice recites the potential and purported benefits for the American public of a satellite DARS service --i.e., the public policy underpinnings of the service. Those "benefits" are: one, service to areas with few or no terrestrial radio broadcasts; two, expanded options in those areas, to those both living in and traveling through these areas; three, expanded programming choices in areas with substantial service; and four, niche and specialized program offerings, including foreign language programming, "untypical" music formats and programming for children and seniors.[95]

NAB submits that these potential or purported benefits are, in the main, either non-existent, unrealistic or of minimal value in terms of numbers of people benefited or of added choice. When compared to the expected costs in terms of diminution of local radio service, whatever value unrestricted DARS will in fact offer cannot be worth the price.

One, the Notice is mistaken in its assumption that there are areas that receive "few or no" terrestrial radio broadcasts, unless of course it means areas where there are in fact *very few* people, save the occasional traveler. As was acknowledged by staff at the Commission meeting allocating spectrum for DARS,[96] the number of people receiving no radio signals is very small. *In fact, only 6100 people aged 12 and older, out of 210 million in the entire country, receive less that 6 radio stations.*[97]

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95 Notice at ¶ 2.

96 FCC Open Meeting, January 12, 1995, staff response to question from Commissioner Ness.

97 1995 Listening Study, supra. The study shows that only .003% of the total population aged 12 and older of 210 million people receive less than 6 signals.

Two, while a DARS service would expand the listening choices in sparsely populated areas, there is no dearth of stations and programming choices in even the less populated areas. The 1995 NAB Listeners Study shows that over 99% of the U.S. population receives at least 11 stations, with 97% receiving at least 21 stations.[98] Even the smallest counties, those with less than 1,000 in population, receive nearly 15 stations.[99] Moreover, the 1995 NAB Format Study shows a substantial number (an average of 15) of recognized formats presented by stations *located* in even the smallest measured market groups.[100] Cheyenne, Wyo., the 258th ranked market (out of 261), with a population of 62,700 (0.03% of the country) has 11 different formats types presented by stations *located* in Cheyenne.[101] Bismarck, ND, the 255th ranked, with a population of 70,200, has 13 different formats on Bismarck stations.[102] Contained in the SPR case studies are quotes from participants from very small towns about the wide number and diversity of stations received in those towns.[103] There are of course both residents and travelers in these less populated and therefore less radioed areas who would benefit from, say, a doubling or more of program choices. NAB submits, however, that providing increased programming choices for these relatively few people cannot be worth the risk of reduced local service that DARS would precipitate in small communities everywhere.

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98 Id.

99 Id.

100 See 1995 NAB Format Study, supra at 2.

101 Id. at 8.

102 Id.

103 SPR Study, supra, at 8, 48 et seq.

Three, the Notice proffers as one of the four main benefits of DARS the expanded programming choices in areas *with* substantial radio service. True, there can always be more choices. But NAB suggests that there is *so much* radio service and choice in the more populated areas that "more" here is of marginal value, particularly in comparison to the risks to local service in the smaller communities. The NAB Analysis of the Number of Radio Stations shows the striking number of stations *located* in measured Arbitron markets. In markets 1-10, with 27.2% of the entire U.S. population, there are an average of 59.5 stations *located* in those markets. In markets 11-25, with 15% of the U.S. population, 12.7% of the population, there are an average of 40.9 stations *located* in those markets. In markets 26-50, with there are an average of 35 stations *located* in those markets. And even in markets 51-100, there are 28.8 stations *located* in those markets. In fact, in markets 101-261, there are an average of 17.9 stations *located* in those relatively less populated markets.[104]

The NAB Format Study also shows a correspondingly large number of formats in those same market groupings. Stations *located* in markets 1-10 present 26 different formats, those in markets 11-25 have an average of 22.6 formats, stations in markets 26-50 present an average of 22 formats, those in markets 51-100 have 18.4 different formats and stations in markets 101-261 present an average of 14.9 different formats.[105] And, as the format that study points out, each of stations located in those markets differentiates its format somewhat from others of the same "type." As that study also points out, there are

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[104] NAB Analysis of the Number of Radio Stations, supra.

[105] NAB Format Study, Supra.

other formats on the many other stations *received* in those markets. Lack of programming choice is clearly not a problem in need of a remedy in the more populated areas.

Four, the Notice presents DARS' ability to aggregate national audiences and present niche programming, particularly foreign language offerings, as a public benefit and reason for the service. NAB acknowledges the technical and theoretical ability of a DARS service to so aggregate national audiences for niche program offerings. We acknowledge that there may indeed be *some* DARS promised program offerings now available only in the top 50 or top 100 radio markets (with 55% and 67.4% of the age 12 and older population, respectively) and perhaps even a few formats not generally available to most radio listeners. But NAB questions how many niche program choices will *actually* be offered. As discussed above, an examination of DARS proponents' suggested formats reveals that only the more popular "niche" formats are to be programmed by DARS providers.[106] In fact, for all the "promise" of niche and foreign language programming, current DARS applicants are suggesting only one foreign language program offering, that of Spanish,[107] which is already widely available, in *local* form, terrestrially. And, as is suggested above, there will be no Portuguese DARS channel, no Vietnamese DARS channel, no Polish DARS channel, unlike the current wide availability of local ethnic radio programming in areas with substantial ethnic populations.[108]

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106 See fn. 79, supra.

107 See fn. 80, supra and accompanying text. The irony of course is the jeopardy to *local* Spanish stations by the provision of a *national* Spanish channel.

108 See Id.

NAB suggests that the minimal incremental programming benefits DARS might provide cannot be worth the losses in local diversity that will result from DARS' diversion of audience, and perhaps of national advertising. NAB thus believes that the Commission's challenge is to find a way of implementing DARS service in a manner that assures that its purported benefits are worth the expected costs.

VI. The Shape and Structure of a Satellite DARS Service.

A. Design of Service

The Commission seeks comment on various proposed satellite DARS service requirements, hoping to ensure that the listening public's needs are met by the "most efficient and responsive service possible."[109] As discussed supra, satellite DARS has the potential to flood each radio market with thirty to eighty new radio signals, and to engender audience and revenue fragmentation of a magnitude that will force potentially radical reductions in the current levels of "efficient and responsive" local public service and community-oriented programming. Indeed, if the introduction of satellite DARS is not properly channeled by the Commission through the formation of appropriate service rules, it could jeopardize the very existence of local stations in smaller markets.[110]

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[109] Notice at ¶ 21. Included in Attachment 12 are two listings of stations with ethnic and (non-Spanish) foreign language programming. There are, for example 104 stations with German programming, 84 stations with Italian programming, 68 stations with French programming, 11 stations with Chinese, Japanese and Lithuanian programming, 9 stations with Vietnamese programming, and on and on. One station in the metropolitan Washington, DC area, WNTL-AM, Indian Head, Maryland, has 14 hours per day of Arabic programming. Another station in the Washington DC area, WUST-AM, calls themselves a "multi-ethnic station," having programming in 12 languages! Surely the richness of the foreign language programming available across the country *will not be duplicated by DARS*, but the local service of those stations likely will be harmed by it.

[110] See, e.g., SPR Study at 56-60.

Accordingly, the NAB urges the Commission to adopt a service design that will minimize the potentially devastating impact that the introduction of satellite DARS could have on terrestrial broadcasters, and in particular, on these broadcasters' continued ability to provide locally produced, community oriented programming. To the extent possible, the Commission should act to ensure that satellite DARS develops as a service that truly is complementary with and not destructive to local terrestrial broadcasting and the invaluable public service benefits it provides. The NAB offers comment below on the Commission's specific design proposals with this goal in mind.

1. Regulatory Classification of Satellite DARS

With respect to regulatory classification, the NAB agrees with the Commission's tentative conclusion that there is no reason at this time to regulate satellite DARS licensees as "common carriers." Satellite DARS providers are likely to offer a menu of subscription programming that is selected by the satellite DARS licensee. Thus, contrary to the classic indiciom of common carriage, satellite DARS providers will exercise discretion over the types of programming they choose to offer. Moreover, applying the traditional NARUC I test of common carriage, there is presently no legal compulsion for satellite DARS providers to serve any particular applicant for services, nor does there appear to be anything implicit in the nature of satellite DARS service that would require satellite DARS providers to hold themselves out indifferently to the user public.[111]

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[111] See Notice at ¶ 23; NARUC v. FCC, 525 F.2d 630, 642-43 (D.C. Cir. 1976, cert. denied, 425 U.S. 999 (1976).

The NAB also supports the Commission's decision to abstain from imposing a requirement that satellite DARS providers operate as broadcasters. Indeed, as the Notice acknowledges, the NAB believes that there are compelling public interest reasons for the Commission to authorize the provision of satellite-delivered DARS only on a ***non-broadcast, subscription basis***.[112]

As a threshold matter, the Commission must recognize that satellite DARS will likely have a competitive impact on terrestrial stations in every radio market -- ***regardless*** of whether it is offered as a "pure" advertiser-supported free service, a pure subscriber service, or some combination thereof -- because satellite DARS providers will be competing with terrestrial broadcasters for listeners.[113] Although satellite DARS may tap incremental new sources of demand, the service simply cannot make sense, considered either as a private investment or as an economically rational allocation of spectrum, if it is not expected to draw significant support from current radio listenership.[114] And, as SPR observes, to the extent that this "greater competition for audience reduces the size of the audiences commercial broadcast stations actually produce (either by decreasing the size of the potential audience or through greater fragmentation of audience), the revenues of commercial broadcast stations will be reduced, ceteris paribus":

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[112] See Notice at ¶ 25; Letter from Edward O. Fritts, President & CEO, NAB, to the Hon. Reed Hundt, Chairman, FCC (May 3, 1995).

[113] See SPR Study, at 37. Moreover, unlike the digital audio service provided by some cable systems and DBS providers, satellite DARS licensees will be competing with terrestrial broadcasters during the key commutation time periods when terrestrial radio listenership peaks. Id.

[114] Id., at 39.